

JAN 27 2006

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

DAJUMA WATKINS,

Petitioner - Appellant,

v.

DOUG WADDINGTON,

Respondent - Appellee.

No. 05-35244

D.C. No. CV-02-05089-RJB

MEMORANDUM^{*}

Appeal from the United States District Court
for the Western District of Washington
Robert J. Bryan, District Judge, Presiding

Submitted January 25, 2006^{**}
Seattle, Washington

Before: RAWLINSON and CLIFTON, Circuit Judges, and BURNS, District
Judge^{***}

^{*} This disposition is not appropriate for publication and may not be
cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

^{**} This panel unanimously finds this case suitable for decision without
oral argument. *See* Fed. R. App. P. 34(a)(2).

^{***} The Honorable Larry Alan Burns, United States District Judge for the
Southern District of California, sitting by designation.

Petitioner Dajuma Watkins ("Watkins") appeals the denial of his federal petition for a writ of habeas corpus. The only issue in this appeal is whether Watkins' trial was prejudicially marred by prosecutorial misconduct during closing argument. Because the parties are familiar with the facts, we do not recite them here.

"Improper argument does not, per se, violate a defendant's constitutional rights." Jeffries v. Blodgett, 5 F.3d 1180, 1191 (9th Cir. 1993) (citations omitted). Prosecutorial misconduct rises to the level of a constitutional violation only when the misconduct "so infected the trial with unfairness as to make the resulting conviction a denial of due process." Darden v. Wainwright, 477 U.S. 168, 181 (1986) (citation omitted).

After *de novo* review of the record, we find no error in the district court's denial of federal habeas corpus relief. None of the prosecutor's five remarks challenged by Watkins, individually or collectively, rises to the level of constitutional trial error or raises any "grave doubt" that the trial error "had substantial and injurious effect or influence in determining the jury's verdict." O'Neal v. McAninch, 513 U.S. 432, 435-36 (1995) (citation omitted). Although the court need not reach the harmless error analysis unless it first finds constitutional trial error (*see* Early v. Packer, 537 U.S. 3, 10 (2002)), there is no

reasonable likelihood in this case that the prosecutor's challenged comments affected the verdict, in view of the court's curative instructions, the weight of the evidence against Watkins, the length of the prosecutor's closing arguments, and the absence of misstatement of evidence, among other things.

AFFIRMED.